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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1879

JACK HUMPHREY,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Georgia

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BRIEF FOR THE RESPONDENT IN OPPOSITION

QUESTION PRESENTED

1.

Simply because a state, under limited circumstances, permits appellate review of non-final judgments and orders in criminal matters, should this Court review the judgment of the state appellate court if the defendant has not yet been convicted of the crime with which he has been charged?

STATEMENT OF THE CASE

On January 10, 1973, the Petitioner, Jack Humphrey, a councilman of the City of Warner Robins, Georgia, was arrested by state and local law enforcement officers for the offense of bribery.

The law enforcement officers, having been apprised of Petitioner's solicitation of a bribe, stationed themselves outside Petitioner's bonding company office at the time the pay-off was to occur. Having been signaled that the pay-off had occurred, the officers placed Petitioner under arrest. The arrest was effected without a warrant.

At the time of arrest, one of the arresting officers discovered a .22 caliber pistol in the right rear pocket of Petitioner's trousers as the officer made a cursory frisk of Petitioner's clothing in effecting the arrest. Another arresting officer saw the money that had passed to Petitioner, as the alleged pay-off, under Petitioner's desk as the officer "sort of leaned over and looked under the desk."

Petitioner was indicted by the grand jury of Houston County, Georgia, on January 16, 1973, for the offense of bribery.

Subsequent to his indictment, Petitioner Humphrey moved *inter alia* to suppress the use of the above-described money as evidence for the state. After a hearing in the Superior Court of Houston County, Petitioner's motion to suppress the money was denied. The Superior Court of Houston County, however, pursuant to Ga. Laws 1965, p. 18, as amended (Ga. Code Ann. § 6-701), certified for immediate review all of the issues raised in the various pre-trial motions filed by Petitioner.

On appeal to the Supreme Court of Georgia, the order denying Petitioner's motion to suppress the use of the money in question as evidence was affirmed. *Humphrey v. State*, 231 Ga. 855, 204 S.E. 2d 603 (1974). Petitioner, yet to be tried on the charge of bribery, now seeks to have the judgment of the Supreme Court of Georgia reviewed by this Court via the writ of certiorari.

Additional facts will be developed subsequently, as necessary, for a more thorough illumination of any issue raised by the petition.

REASONS FOR NOT GRANTING THE WRIT

I. Petitioner Humphrey seeks review of a judgment affirming the denial of his pre-trial motion to suppress evidence; as Petitioner Humphrey has not yet been convicted of the crime with which he is charged, he seeks review of a non-final judgment.

Petitioner Humphrey urges this Court to review, pursuant to 28 U.S.C. §1257(3), the judgment of the Supreme Court of Georgia in *Humphrey v. State*, *supra*, pertaining to the seizure of money at the time Petitioner was arrested for the offense of bribery. It should be noted, however, that 28 U.S.C. §1257 provides for the review of final state court judgments.

Respondent submits that a final judgment in a criminal matter is ordinarily the imposition of sentence. As Petitioner has merely had the denial of his motion to suppress evidence affirmed by the Supreme Court of Georgia and as Petitioner has not been convicted of the offense with which he is charged, the judgment Petitioner seeks to have reviewed by this Court is not final and therefore not ripe for consideration by the Court.

Whitus v. Georgia, 385 U.S. 545 (1967) (Case No. 253); *Arceneaux v. Louisiana*, 376 U.S. 336 (1964); *cf.*, *Wilson v. Schnettler*, 365 U.S. 381, 384 (1961), *reh. denied* 365 U.S. 890.

Respondent, of course, is aware of *Mills v. Alabama*, 384 U.S. 214 (1966). Respondent would distinguish *Mills* on the basis that the petitioner there attacked the constitutional validity of a state statute and conceded that he committed acts proscribed by the challenged statute. As a practical matter, in view of the concession by the petitioner in *Mills*, all that remained for the trial court was little more than the entry of judgment and sentence. In the case *sub judice* Humphrey does not attack the constitutional validity of the Georgia bribery statute and he definitely has not conceded that he committed acts coming within the proscription of the statute.

As the judgment complained of is not final within the purview of 28 U.S.C. §1257, it would be improvident for the Court to grant the writ of certiorari sought by Petitioner Humphrey.[1]

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[1] As to the lawfulness of Petitioner's arrest, Respondent submits that there was more than sufficient probable cause to effect Petitioner's arrest. *Draper v. United States*, 358 U.S. 307 (1959); *Trupiano v. United States*, 334 U.S. 699, 705 (1948) (motion to suppress *prior* to indictment); *cf.*, *Beck v. Ohio*, 379 U.S. 89 (1964).

CONCLUSION

For all of the above and foregoing reasons, the Court should refuse to grant the writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William Fletcher Bartee, Jr., Attorney of Record for the Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I served two copies of the foregoing Brief for the Respondent in Opposition upon the Petitioner by depositing same in a United States mailbox, with first class postage prepaid, addressed to counsel of record as follows:

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This _____ day of July, 1974.

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WILLIAM FLETCHER BARTEE, JR.